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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 211

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Petitioner,

vs.

CHICAGO UNION STATION COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

	PAGE
Opinions below	1
Court of Appeals	1a-5a
District Court	6a-9a
Jurisdiction	2, 5a
Questions Presented	2, 3
Statutes Involved	3, 10a-14a
Statement of the Case	4-7
Reasons for granting the writ	7-9
Conclusion	10
Appendix	1a-14a

CITATIONS.

Cases:

Crispin Company v. Lykes Bros. Steamship Co., 134 F. Supp. 704, 706	4, 6, 8
New York, N. H. & H. R. Co. v. Nothnagle, 346 U.S. 128, 97 L. ed. 1500	7, 8, 9
Michigan Cent. R. Co. v. Carrow, 73 Ill. 348	8
Rice v. Sioux City Cemetery, 349 U.S. 70, 74, 99 L. ed. 897, 901	9

Statutes:

49 U.S.C. 1(3)	3, 9, 10a
49 U.S.C. 20(11)	3, 7, 8, 9, 10a 11a
28 U.S.C. 1254(1)	2, 3, 13a
28 U.S.C. 1331	2, 3, 4, 13a
28 U.S.C. 1332(a)(1)	2, 3, 4, 13a
28 U.S.C. 1337	2, 3, 4, 14a

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, St. Paul Fire and Marine Insurance Company, prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit entered in the above case on March 28, 1958.

CITATION TO OPINION BELOW.

The opinion of the Court of Appeals, printed in Appendix A hereto, *infra*, pp. 1a-5a, is reported in 253 F. 2d 441.

(The opinion of the district court was made orally at the conclusion of the trial and is not reported in any official publication. The same is contained in the Appendix filed in the Court of Appeals at pages 92 to 95 and is printed in Appendix B hereto, *infra*, pp. 6a-9a).

JURISDICTION.

The judgment of the Court of Appeals was entered on March 28, 1958, and a rehearing denied on April 28, 1958. (These appear in Appendix A hereto, *infra*, p. 5a). This petition is filed within 90 days of the denial of the petition for rehearing in the United States Court of Appeals for the Seventh Circuit. The jurisdiction of this court is invoked under 49 U.S.C. 1, *et seq.*, and 28 U.S.C. 1254(1), 28 U.S.C. 1331, 1332(a)(1), 1337.

QUESTIONS PRESENTED.

Petitioner's assured, a travelling jewelry salesman, and prospective train passenger holding a ticket for interstate passage, entrusted two sample cases, containing a stock of jewelry samples of a value in excess of Thirty Thousand ($30,000.00) Dollars, belonging to him and to other of Petitioner's assureds, to a redcap who was employed by Respondent, which owns and operates a railroad station serving several interstate railroads. The sample cases were to be redelivered by the redcap to Petitioner's assured aboard one of the trains departing from the station, upon surrender of the claim checks given by the redcap at the time he accepted possession of the receptacles.

The redcap delivered the sample cases to an impostor without requiring the surrender of the claim stubs.

Respondent claimed no limitation of liability by virtue of any tariff schedule filed with the Interstate Commerce Commission, or upon any other basis.

Neither the opinion of the District Court nor that of the Court of Appeals gives any consideration to the question as to whether or not the Carmack Amendment is pertinent to or controlling on the facts of the case.

The questions presented are:

1. Whether the Carmack Amendment to the Interstate Commerce Act, (49 U.S.C. 20(11), if otherwise controlling with respect to the liability of a railroad station serving interstate railroads, for the loss of property, of interstate passengers, handled by redcaps employed by the station, is rendered inapplicable, so as to permit diverse local law to control, in the following situations:

(a) Where the contents of closed receptacles delivered to the redcap constitute salesmen's samples, the actual nature or value of which is not inquired into by the redcap, nor disclosed by the passenger.

(b) Where the railroad station has failed to file a valid tariff schedule with the Interstate Commerce Commission, and also fails to assert the existence of such tariff schedule.

(c) Where, in the absence of a valid tariff schedule limiting its liability, the acts of Respondent's redcap, in relinquishing possession and control of the sample cases and their contents by placing them in a taxi-cab at the request of a stranger, without requiring the surrender of the claim checks, thereby leaving the sample cases at the disposal of the stranger, who was thus enabled to, and who did make away with them, constitute a misdelivery thereof so as to render Respondent liable for the full actual value thereof.

STATUTES INVOLVED.

The pertinent portions of Title 49 U.S.C. Secs. 1(3), and 20(11), are set forth in Appendix C hereto at pp. 10a-12a, and the pertinent portions of Title 28 U.S.C. Secs. 1254(1) 1331, 1332(a)(1) and 1337 are set forth in Appendix C hereto at pp. 13a-14a.

STATEMENT OF THE CASE

This action arose from the loss of a stock of jewelry samples, belonging to Petitioner's assureds, contained in two sample cases, which had been delivered, by one of Petitioner's assureds, to a redcap, employed by Respondent, which owns and operates a railroad station, serving several interstate railroads (App. 13),* and provides, among other services, a redcap service for the handling of property of passengers travelling interstate (App. 43), for which it exacts a separate charge, which was paid (App. 13, 26).

The loss was occasioned by reason of the misdelivery of the sample cases and their contents by the redcap (App. 15, 16).

The amount claimed by Petitioner, as subrogee of its assureds, to whom it had made payment for the loss of said jewelry samples (App. 18), under insurance policies issued by it, was $34,605.88 (App. 18), thus satisfying the jurisdictional requirement prescribed in the statute (28 U.S.C. 1331). Facts are alleged in the complaint (App. 2-6) which gave the District Court below original jurisdiction of the cause (28 U.S.C. 1337). [*Crispin Company* v. *Lykes Bros. Steamship Co.*, 134 F. Supp. 704, 706] Moreover, there is diversity of citizenship between the parties (App. 2), (28 U.S.C. 1332 (a) (1)).

At the time of the delivery of the sample cases and their contents to Respondent's redcap, on September 11, 1955, Petitioner's assured, a travelling salesman holding a ticket for interstate passage to Minneapolis, Minnesota, on the Burlington railroad served by Respondent, told the redcap that the sample cases were valuable (App. 26, 43). The redcap made no inquiry as to the actual nature or

* All similar references are to appendix filed in the Court of Appeals, filed herewith, except as otherwise indicated.

value of the contents of the cases, nor did Petitioner's assured volunteer any disclosure thereof, although the redcap stated, after the event, that he knew, from experience, that Petitioner's assured was a salesman, and that the cases involved contained his salesman's samples (App. 87).

Upon receiving the sample cases the redcap gave Petitioner's assured a claim check for each thereof, by means of which they could be identified (App. 43, 130), and which were required to be surrendered to the redcap as a condition precedent to redelivery thereof to Petitioner's assured aboard the Burlington railroad before its departure from Respondent's station (App. 15).

These claim checks, although having imprinted thereon, among other things, the amount of the charge exacted by Respondent for the service of transporting the cases from the interior of the station to the train (App. 130), in no way indicated any limitation or restriction concerning the nature or value of property which Respondent would undertake to handle, through its redcaps. Neither was there any indication thereon of any limitation or restriction respecting Respondent's liability in the event of the loss of the property entrusted to its redcaps (App. 130); nor was it ever contended that Petitioner's assured was notified or informed of any such limitations, restrictions or conditions, either by the redcap, or by posted signs, or otherwise.

Respondent claimed no limitation of liability by virtue of any tariff schedule filed with the Interstate Commerce Commission.

After Petitioner's assured had delivered the bags to the redcap, a stranger approached the redcap, and upon the pretext of being a brother of Petitioner's assured, stated that they had changed their minds about making the trip (App. 25) and requested that he be given the

sample cases here involved. The redcap explained that the claim checks would have to be surrendered before he could give up the cases (App. 26); nevertheless, when the stranger persisted in his request, the redcap took the sample cases off his truck and carried them to the station taxicab area, and, without requiring the surrender of the claim checks, placed the sample cases in a waiting taxicab, with the stranger inside, who drove off with them (App. 76, 77). Neither the sample cases nor their contents were ever recovered (App. 16).

The case was argued below on two theories: (i) That as a bailee for hire, Respondent was liable for the loss sustained by reason of the misdelivery of the sample cases to an impostor, without requiring the surrender of the claim checks, whether or not Petitioner's assured had disclosed the nature or value of the contents of the cases to the redcap; and (ii) That upon the allegations of the complaint (App. 2-6), [*Crispin Company* v. *Lykes Bros. Steamship Co.*, 134 F. Supp. 704, 706] and the facts adduced in the trial court by way of admissions of Respondent (App. 13-19) the testimony of witnesses, and the deposition of the redcap, read in evidence, the Interstate Commerce Act (49 U.S.C., sec. 1, *et seq.*) applied, and that by reason of Respondent's failure to effect a valid limitation of liability by compliance therewith, its liability for the loss was absolute.

The District Court in dismissing the case after the trial (Appendix B hereto, *infra*, pp. 6a-9a), and the Court of Appeals, in affirming (Appendix A hereto, *infra*, pp. 1a-4a), took the position that the failure of Petitioner's assured to make an unsolicited disclosure of the nature and value of the contents of the sample cases, precluded recovery for the loss.

From the opinions rendered it is apparent that neither the District Court (Appendix B, *infra*, pp. 6a-9a), nor the

Court of Appeals (Appendix A, *infra*, pp. 1a-5a), gave any consideration to the question of whether or not the Interstate Commerce Act (49 U.S.C. sec. 1, *et seq.*) was pertinent or controlling on the governing facts of the case.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it is in direct conflict with the decision of this Court in *New York, N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128, 97 L. ed. 1500.

The factual differences between the two cases, insofar as they as they impinge on the questions here presented are minor; the similarities are clear and important. In the cited case, as in the instant case, there was no disclosure of the contents of the receptacles; no inquiry was made by the redcap with respect thereto; no notice of any limitation of liability was conveyed to the passenger; no "opportunity to choose between higher or lower liability by paying a correspondingly greater or lesser charge" (*New York, N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128, 135, 97 L. ed. 1500, 1507) was afforded in either case; yet this Court, in the cited case, held there was absolute liability for the actual loss sustained, while the Court below in the instant case denied recovery.

The decision below in effect promulgates additional limitations to the application of the Carmack Amendment to the Interstate Commerce Act (49 U.S.C. sec. 20 (11)) neither contemplated by the Congress (*New York, N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128, f.n. 7, 8, 9, at 132, 97 L. ed. 1500 at 1505), nor capable of being inferred from the plain language thereof (49 U.S.C. sec. 20 (11)), and clothes with apparent validity the untenable proposition that all that need be done to avoid the consequences of the Act in question is either to refrain from

complying therewith, by not filing a valid tariff schedule with the Interstate Commerce Commission, or to fail to urge such a tariff schedule in a case which, upon the facts, is clearly controlled by the Act (*Crispin Company* v. *Lykes Bros. Steamship Co.*, 134 F. Supp. 704, 706).

It is apparent that the court below sought to avoid the issue of the applicability of the Carmack Amendment to the facts of the instant case by reliance on the case of *Michigan Cent. R. Co.* v. *Carrow*, 73 Ill. 348, decided in 1874 before the "Congress superseded diverse state laws with a nationally uniform policy governing interstate carriers' liability for property loss" (*New York, N. H. & H. R. Co.* v. *Nothnagle*, *supra*).

Implicit in the holding of the court below that Respondent's "unwitting possession of the jewelry is an insufficient basis for attaching absolute liability . . .", (253 F. 2d 441, 443) (Appendix A, *infra*, pp. 1a-4a) is the conclusion: That in a case, on its facts obviously arising under an "Act of Congress regulating commerce" (28 U.S.C. 1337), namely, the Carmack Amendment to the Interstate Commerce Act (49 U.S.C. 20 (11)), *no liability attaches* to railroad stations, in the position of Respondent, where property, contained in closed receptacles, and delivered, by interstate travellers, to redcaps employed by such stations, consists of a stock "salesman's samples," rather than "personal effects", *unless* the passenger makes a voluntary disclosure of the nature and value of the property to the redcap, even where no notice of any limitation or restriction is made known to the passenger, or opportunity afforded to choose a higher or lower liability.

In this important aspect the conflict between the decisions of the courts below (Appendix A, *infra*, pp. 1a-5a; Appendix B, *infra*, pp. 6a-9a) and the decision of this

Court in *New York, N. H. & H. R. Co.* v. *Nothnagle, supra,* is real and clear, requiring that this conflict be resolved by this Court.

If, in its consideration of the matter, this Court should conclude that there is no such conflict between the cases as is here urged, it is respectfully submitted that this Court should nevertheless grant certiorari, because, the question of whether or not the Carmack Amendment extends only to certain classes of property delivered to redcaps, in the ordinary course of interstate travel, such as "personal effects", and excludes others such as "salesman's" samples, where the procedures for limiting liability outlined by the Act are not complied with, is a question of great and recurring significance, "beyond the academic or the episodic" (*Rice* v. *Sioux City Cemetery,* 349 U.S. 70, 74, 99 L. ed. 897, 901), since it clearly affects a large segment of the travelling public, to-wit, the large number of travelling salesmen, who carry their samples with them, and who usually avail themselves of the redcap service offered by railroad station companies such as Respondent, who serve interstate railroads, and are thus clearly within the purview of the Interstate Commerce Act (49 U.S.C. sec. 1 (3)) and whose liability for loss of property is governed thereby (49 U.S.C. 20 (11)).

The important nature of the question here raised has already been recognized by this Court in *New York, N. H. & H. R. Co.* v. *Nothnagle, supra.* Its full determination by this Court is vital to the effective administration of a "nationally uniform policy governing interstate carriers' liability for property loss" (*New York, N. H. & H. R. Co.* v. *Nothnagle, supra*).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12169 September Term, 1957, January Session, 1958

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,
Plaintiff-Appellant,
v.
CHICAGO UNION STATION COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 28, 1958

Before FINNEGAN and HASTINGS, *Circuit Judges*, MERCER, *District Judge*.

FINNEGAN, *Circuit Judge*. Late one afternoon in September, 1955, Mintz, a jewelry manufacturer's representative, went to the Union Station, Chicago, Illinois, to take a train for Minneapolis. When Mintz arrived at the defendant's, (Chicago Union Station Company), railroad station he checked his two sample cases and brown two-suiter bag with defendant's Red Cap No. 71, named Rettig, who gave Mintz three claim stubs for 25¢ each. Mintz, testifying on direct examination, related substantially the following regarding his interchange with Rettig:

> "I told him 'Here are three bags to be loaded on the train for Minneapolis,' and he gave me three

stubs, and I told him to be careful, that they were valuable and to make sure it doesn't roll off the truck, to put it flat, and he said, 'All right; I will claim the checks when you board the train.' I gave him a dollar for the three bags. I think he told me 'Make sure you have your checks with you, because I will call out the number' and I said, 'I know that.' I had no other conversation with the red cap other than that I told him to be careful of the bags and that they were valuable and to make sure the one on wheels don't fall off the truck.

"I left the Red Cap and made a call home. I know a secret door through which I went down to the train to avoid waiting for all the people. I noticed a Red Cap and I asked him if he was Red Cap 71. He was busy unloading and didn't answer. I was first to board the train and I made sure I got the rear seat to reserve space for the bags.

"It was only a few minutes. I asked the porter to see if my bags were on the platform; the man couldn't find it. The train started. . . . When I delivered these bags to the Red Cap on September 11, 1955 they had in them the cases of trays and cases of jewelry, and my watches and there was another case in which the watch cases were."

What subsequently transpired could hardly be controverted by Mintz personally, and, indeed, the following findings of fact are undisputed: "* * * redcap No. 71 had about 27 or 28 bags on his truck, which was a full load. About that time a man approached him and said 'We are not making the trip; we are going to drive up by automobile to Minneapolis.' The redcap inquired as to who was not going to make the trip on the train; and this man said, 'These three bags,' and he pointed out the three bags for which the redcap had issued the three baggage checks. The redcap informed the man that he was required to get the claim checks; and that if he did not turn over the claim checks the man would have to send to Minneapolis for the bags because that is where

they would be. The man replied that his brother had the checks and was telephoning. The redcap gave the . . . man ten more minutes to produce the . . . baggage checks. About five minutes later, the man who wanted the bags taken off the truck . . . returned. . . . Upon being asked where the claim checks were, he said, 'My brother is just finishing his telephone call; he will be here. Will you please bring these bags out to the cab for me?' The redcap directed the man to go to the northside cab court where people ordinarily came into the station instead of the southside cab court where they go out. The redcap then took the three bags covered by the three baggage checks off his truck and carried them to a waiting Yellow cab in the incoming cab stand. The redcap then placed the bag with the wheels on it in the front compartment of the cab; and the man claiming these bags put the suitcase in the rear passenger space of the cab. Then the redcap and the man waited for the return of his brother, who was allegedly telephoning. As the time for the departure of the train was getting very close, the redcap sought to obtain the help of another redcap, either to await the return of the brother or to take the baggage truck of redcap 71 to the train for the delivery of the baggage to the passengers. As the redcap opened the door leading into the train concourse from the cab stand to look for another redcap, he heard the taxicab starting and saw it pull away.

"The three baggage checks were not re-delivered to the said redcap or to any other employee of the defendant; and the said jewelry cases were not recovered by Harry L. Mintz or the plaintiff."

St. Paul Fire and Marine Insurance Company, plaintiff, covered this loss and after paying $34,605.58 to three of its assured, who, including Mintz, owned various pieces of the stolen jewelry, became subrogated to their rights, and as subrogee commenced this action for recovery of the total amount of indemnity paid by it. Plaintiff appealed from judgment for the defendant, and dis-

missal of its case, and now seeks reversal in our court, and, entry of judgment in its favor. No request for a new trial is made. The critical facts are uncontroverted. Rule 52, Federal Rules of Civil Procedure, 28 U.S.C.

Treatise writers display a marked tendency to generalize about bailments and their ideas are apt to reproduce themselves for application in undiscriminating factual situations. Nothing in this shallow evidentiary showing before us establishes defendant's knowledge of the jewelry inventory covertly carried in two cases by Mintz. Defendant's unwitting possession of the jewelry is an insufficient basis for attaching absolute liability on these facts. *Michigan Cent. R. R. Co.* v. *Carrow*, 73 Ill. 348. Bailment is a consensual relation and allowance of recovery, by this plaintiff, would mean holding defendant liable for failure to take precautions with unknown chattels. See *e.g. Crosby* v. *20 Fifth Avenue Hotel Co.*, 173 Misc. 603, 17 N.Y.S. 2d 498 (1940); *Stuart* v. *D. N. Kelly & Son*, 331 Mass. 76, 117 N.E. 2d 160 (1954).

There is, we think, liability for at least the nominal value of the two sample cases *qua cases* (excluding jewelry) and the two-suiter bag and its contents bailed to defendant. *D. A. Schulte, Inc.* v. *North Terminal Garage Co.*, 197 N.E. 17, (1935). But apparently the subrogee-plaintiff only paid out on the value of the lost jewelry and in any event makes no claim for, and hence cannot recover, such nominal damage.

JUDGMENT AFFIRMED.

IN THE
UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois
Friday, March 28, 1958
Before
Hon. Philip J. Finnegan, Circuit Judge
Hon. John S. Hastings, Circuit Judge
Hon. Frederick O. Mercer, District Judge

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, Plaintiff-Appellant, vs. CHICAGO UNION STATION COMPANY, Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 12169	

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, WITH COSTS.

IN THE
UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois
Monday, April 28, 1958
Before
Hon. Philip J. Finnegan, Circuit Judge
Hon. John S. Hastings, Circuit Judge
Hon. Frederick O. Mercer, District Judge

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, Plaintiff-Appellant, vs. CHICAGO UNION STATION COMPANY, Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 12169	

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.

APPENDIX B.

Oral opinion delivered at the conclusion of the trial by District Judge John P. Barnes. (See Appendix filed in Court of Appeals, filed herewith, pages 92-95).

By the Court: * * * As far as I can see, the case before the Court is ruled by this Michigan Central Railroad Company against Carroll in 75 Ill., Page 348.

If I understand the situation with this Union Station Company and railroads and station companies similarly situated they do not hold themselves out as providing ushers to transport currency or jewelry or articles of very great value.

On the other hand, they hold themselves out to transport hand baggage such as those things which are ordinarily carried by travelers, a bag containing some clothes, shoes, maybe some underclothing and a brush and comb and some other things necessary for the traveler to have.

I think it was a constructive fraud on the part of this insured to attempt to carry $36,000.00 worth of jewelry on the train without paying for its carriage and to seek to have it transported by the redcap. I don't think the insured told the redcap, "Be careful of that; it is valuable." That wasn't his state of mind. He probably did tell him, "Be careful; that one case will roll off your truck," but I don't believe he told that redcap that that bag was valuable, because that wasn't the state of mind he was in.

He wanted to carry a valuable lot of merchandise for nothing from Chicago to Minneapolis.

By Mr. Magid: But, your Honor—

By the Court: I never allow anybody to interrupt me. Don't do that.

By Mr. Magid: I thought you were looking at me.

By the Court: I may look at you, but I don't wish you to talk after I start to talk.

By Mr. Magid: I didn't mean to interrupt, your Honor.

By the Court: I think the state of mind of the insured was that he wanted to get his package of jewelry, which he says was worth $36,000.00 from Chicago to Minneapolis without paying what would ordinarily have been the charge for its transportation, the insurance of it against loss.

Therefore, he did not—and I am just as sure of that as I am sure of anything about this case—tell that redcap that that bag was valuable. And when he made his statement on the following Tuesday in the Union Station, he didn't say that he said that, and when we presented his statement to the insurance company, he didn't say that he said that.

The result of that is that I don't think there was a contract of bailment, and further, what happened when that bag disappeared wasn't any different than though it had been taken off by stealth when the usher wasn't about, not a particle of difference.

A man came up and said, "We are not going by train. We are going by automobile. We are going to drive up. My brother is telephoning" and, in effect, he said, "We want to take those bags out to the cab. We are not going by train."

The usher demurred but was persuaded. Here he had a truckload of baggage to go out to the Burlington train, and he thought his customer had changed his mind and didn't want to go by train, so he was torn between a desire to get the baggage to the train and a desire to accommodate these men who had changed their minds and were not going to use the train.

He was tricked into taking the baggage off his truck. He was tricked into putting it into an automobile, and when he turned around to get somebody to watch the merchandise in the automobile or to take the truck to the Burlington train, the purported brother drove off.

I can't see a particle of difference in principle, between that and than if that man or some other man had come up, that alleged brother had came up and by stealth taken the three bags off the truck, not a particle.

He didn't intend to deliver those bags until he got his checks, and they were stolen from him while he was engaged in a natural effort to accomodate accommodating the traveling public.

If the situation were such that I had to render judgment for the plaintiff I would have very great concern, very, very great concern about the amount of that judgment. He says the jewelry, the watches and rings and diamonds and earrings were worth what, $36,000.00?

By Mr. Magid: $34,600 and something.

By the Court: The plaintiff says that?

By Mr. Magid: Yes.

By the Court: There is evidence that the insurance company paid that sum of money to the owner of this property, but the value of that merchandise, if I were called upon to pass on it, it would give me pause. If

I were called upon to say how much he lost, I would be disturbed. He did say that his stock was worth about twenty or twenty-one thousand dollars. He said that on a paper which I think is undated, and he signed it.

That is, the insured signed it, Mintz, and attached to that now are two sheets of paper, not signed by Mr. Mintz, but signed by the firm of insurance adjusters, and when I first heard that paper read, I thought that Mintz was telling the value of the goods, the value of all the goods in his cases.

At any rate, I don't have to worry about that. I don't think there can be any recovery, and I don't think there should be any recovery, but if there were to be recovery, I tell you I would be disturbed about the amount of any recovery in excess of twenty or twenty-one thousand dollars.

I don't think it is necessary to say anything else unless there is some matter I have overlooked and I should cover, and you may call my attention to it.

By Mr. Magid: Anything else might be construed as an argument. I don't mean to argue with the Court.

By the Court: That is the best I can do with it, gentlemen.

APPENDIX C.

49 U.S.C. Chapter 1,—Transportation—Section 1, par. (3) #1, par. (3) Definitions.

§ 1, par. (3) *Definitions.* The term "common carrier" as used in this chapter shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this chapter it shall be held to mean "common carrier." The term "railroad" as used in this chapter shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property.

• • •

49 U.S.C. Chapter 1,—Transportation, Section 20 (11)

§ 20, par. (11). Liability of initial and delivering carrier for loss; limitation of liability; notice and filing of claim. Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation, from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign

country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is

sought to be made is declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this title; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

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28 U.S.C., Chapter 81, Supreme Court—Jurisdiction, Section 54.

§ 1254 (1) Courts of Appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

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28 U.S.C., Chapter 85, District Courts—Jurisdiction, Section 1331.

§ 1331. Federal question; amount in controversy

The district courts shall have the original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. June 25, 1948, c. 646, 62 Stat. 930.

28 U.S.C., Chapter 85, District Courts—Jurisdiction.

Section 1332

§1332 (a)(1)—Diversity of Citizenship; amount in controversy.

(a)(1) The district Courts shall have original jurisdiction of all civil actions in which the matter in controversy exceeds the sum or value of $3,000 exclusive of interests and costs, and is between:

(1) Citizens of different States;

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28 U.S.C., Chapter 85, District Courts—Jurisdiction, Section 1337.

§ 1337. Commerce and anti-trust regulations

The district courts shall have the original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. June 25, 1948, c. 646, 62 Stat. 931.